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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Utility Consumers' Action Network,

Complainant,

vs.

SBC Communications, Inc. dba SBC Pacific
Bell Telephone Company (U-1001-C) and
related entities (collectively SBC),

Defendants.

Case 05-11-011

(Filed November 14, 2005)

Utility Consumers' Action Network,

Complainant,

vs.

Cox California Telecom II, LLC, doing
business as Cox Communications, and related
entities (collectively Cox),

Defendants.

Case 05-11-012

(Filed November 14, 2005)

**JOINT RULING OF THE ASSIGNED COMMISSIONER
AND THE PRESIDING OFFICER**

The Assigned Commissioner and the assigned Administrative Law Judge,
who is the Presiding Officer, having formed a reasonable basis to believe that
defendants AT&T California and Cox California Telecom, their officers, agents,

and/or attorneys may have violated the Public Utilities Code, the Commission's Rules of Practice and Procedure, or the Rules of Professional Conduct of the State Bar of California, state and rule as follows:

Preliminary Statement of Facts

1. The complaints of the Utility Consumers' Action Network (UCAN) in these proceedings allege violations of Public Utilities Code section 2883 concerning defendants' obligations to provide 911 "warm line" access. The complaints seek reimbursements, penalties, punitive damages, and other remedies. Both proceedings are categorized as adjudicatory. Pursuant to Public Utilities Code section 1701.2(b) and Commission Rules of Practice and Procedure 7(b), the Scoping Memo issued on January 20, 2006, indicated that "*ex parte* communications with the Assigned Commissioner, other Commissioners, their advisors and the ALJ are prohibited."

2. Throughout the proceedings, defendants urged that another forum, other than an adjudicatory action, would be more appropriate for the contested issues.¹

3. Defendants also moved to dismiss the complaints. The Presiding Officer dismissed one cause of action in each complaint; the defendants' motions were

¹ See AT&T California, Answer to UCAN Complaint 8 (Dec. 22, 2005) (Sixth Affirmative Defense: "A bilateral Complaint proceeding is not the proper venue for the Commission to promulgate its interpretation of Section 2883, which will have general applicability to the entire LEC [local exchange carrier] community in California."); Cox California Telecom, Reply to UCAN's Opposition to Motion to Dismiss Complaint 1 (Mar. 14, 2006) ("[I]t would be more appropriate for the Commission to address such issues in industry-wide workshops instead of this complaint proceeding . . .").

denied in all other respects.² The proceedings are scheduled for evidentiary hearings starting on July 31, 2006.

4. On June 2, 2006, defendants filed a joint motion (Rules Motion) in the Commission's Local Competition Docket, R.95-04-043/I.95-04-044, requesting that the Commission promulgate rules in that docket regarding carriers' "warm line" obligations under section 2883.³ Simultaneously, defendants filed a joint motion (Stay Motion) in these two adjudicatory proceedings asking for a stay pending a determination "as to whether the Commission will address the requirements of section 2883 in a generic, industry-wide proceeding" in the Local Competition Docket.⁴ The merits of the Rules Motion and the Stay Motion are addressed by separate rulings in the respective proceedings.

5. In their Rules Motion, the defendants specifically refer to the two pending adjudicatory proceedings and, among other things, argue:

(a) "[t]he foregoing determinations should be made generically in an industry-wide forum and not in the context of individual bilateral complaint proceedings;"

(b) "[a] complaint proceeding is unsuitable for considering such broad, industry-wide policy mandates;"

(c) "the topics raised in UCAN's two section 2883 complaints currently pending before the Commission would be more

² ALJ Ruling on Motions to Dismiss (April 6, 2006).

³ AT&T California & Cox California Telecom, Joint Motion for the Commission to Establish Industry-Wide Local Competition Rules Regarding Carriers' Warm Line Obligations (June 2, 2006) (Rules Motion).

⁴ AT&T California & Cox California Telecom, Joint Motion to Stay the Coordinated Complaint Proceedings 3 (June 2, 2006) (Stay Motion).

appropriately aired in technical workshops where various networks, capabilities, and carrier practices can be discussed The proper forum is the Local Competition docket;” and

(d) [u]nless the Commission addresses section 2883 generically in the Local Competition docket, rules will be fashioned in an ad hoc manner on a carrier-by-carrier basis in individual complaint proceedings, such as the two complaint cases currently pending before the Commission⁵”

6. The Presiding Officer in these adjudicatory proceedings has learned of a meeting that may have occurred on Thursday, June 15, 2006, between representatives of AT&T California and Cox California Telecom, defendants in these two coordinated proceedings, and personal advisors for one or more Commissioners. The Presiding Officer received this information in a non-privileged communication from the Assigned Commissioner’s personal advisor.

7. The subject of the alleged meeting may have concerned the defendants’ Rules Motion. No information is yet available as to whether the meeting or other communications addressed the two complaint proceedings, the parties’ Stay Motion, or any relationship between the parties’ Rules Motion and the proceedings and remedies sought in the complaint proceedings. Based on the defendants’ previous arguments and pleadings, including the Rules Motion, a reasonable inference may be drawn that defendants’ success in securing rulemaking in the Local Competition Docket would improve their substantive positions, to the detriment of plaintiff’s substantive position, in the adjudicatory proceedings.

⁵ Rules Motion at 7, 9-10.

8. No *ex parte* notice appears to have been filed concerning any meeting.

9. The defendants have not petitioned the Commission for a new rulemaking proceeding addressing “warm line” access, a procedure that is available under Public Utilities Code section 1708.5 and Rule 14.7.

Notice of Potential Violations

Based on these preliminarily determined facts, which may be modified or corrected through further investigation or hearing, there is a reasonable basis to conclude that defendants, their officers, agents, and/or attorneys may have engaged in impermissible *ex parte* communications with one or more Commissioner’s personal advisors with the intent of influencing substantive issues in adjudicatory proceedings. If so, defendants, their officers, agents, or attorneys may have violated provisions of the Public Utilities Code, the Commission’s Rules of Practice and Procedure, or the Rules of Professional Conduct of the State Bar of California including, but not limited to, the following:

1. Public Utilities Code section 1701.2(b);
 2. Rules 1 & 7(b) of the Commission’s Rules of Practice and Procedure ;
- and/or
3. Rule 5-300 of the Rules of Professional Conduct of the State Bar of California.

Based on the foregoing, **IT IS RULED** as follows:

1. AT&T California and Cox California Telecom (defendants), their officers, agents and attorneys are prohibited from engaging in any *ex parte* communications with covered persons (as those terms are defined in Rules 5(e) & (f)) concerning substantive issues in these adjudicatory proceedings or with the intent of influencing substantive issues in these adjudicatory proceedings.

2. On or before June 30, 2006, any officer, agent, or attorney of the defendants who engaged in any *ex parte* communication with a “decisionmaker” (as that term is defined by Rule 5(f)) for purposes of these adjudicatory proceedings, concerning substantive issues in these adjudicatory proceedings, shall file and serve a declaration setting forth the information required by Rule 7.1(a). The report of the “communication and content” must be in detail.

3. On or before June 30, 2006, defendants’ attorneys of record in these proceedings shall file and serve declarations, based on non-privileged information, in response to these questions:

(a) What information do you have about any *ex parte* communications that might have occurred between defendants, their officers, agents, or their attorneys, as described in the preceding Preliminary Statement of Facts?

(b) Were you aware of any such *ex parte* communication before it occurred?

(c) Did you approve, sanction, or otherwise countenance any such *ex parte* communication before it occurred?

In answering these questions, counsel are reminded of provisions of Rule 3-210, *Advising the Violation of Law*, and Rule 5-220, *Suppression of Evidence*, Rules of Professional Conduct of the State Bar of California.

4. On or before June 30, 2006, UCAN shall file and serve a declaration setting forth any additional information it might have concerning the Preliminary Statement of Facts.

5. A Prehearing Conference (PHC) will be held at 9:00 a.m. on Friday, July 7, 2006, before the Presiding Officer or another designated Administrative Law Judge, in a Commission courtroom at 505 Van Ness Ave., San Francisco, California, for a review of the declarations and other pleadings filed in response

to this ruling. Defendants' officers, agents, or attorneys may be called to testify; or, alternatively, a separate evidentiary hearing may be scheduled. The attorneys and other representatives of defendants who have appeared in these proceedings shall be present. Defendants' counsel also shall produce all other persons involved in making any of the alleged communications on behalf of defendants or, no later than three days before the PHC, notify the Presiding Officer so that subpoenas may issue.

6. UCAN has filed a motion to withdraw its complaint against Cox California Telecom, and the briefing on this motion is still open. The motion will be considered on its merits; however, proceeding C.05-11-012 will not close until the issues raised by this ruling are resolved.

7. Copies of all pleadings and documents filed and served pursuant to this ruling will be sent by e-mail to the Presiding Officer (jet@cpuc.ca.gov).

Dated June 26, 2006, at San Francisco, California.

/s/ GEOFFREY F. BROWN
Geoffrey Brown
Commissioner

/s/ JOHN E. THORSON
John E. Thorson
Administrative Law Judge

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a copy of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the copy of the filed document is current as of today's date.

Dated June 26, 2006, at San Francisco, California.

/s/ ELIZABETH LEWIS

Elizabeth Lewis

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Last Update on 20-JUN-2006 by: CPL
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